

# **EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

HOME DEPOT USA, INC and DOE 1 through DOE 100 Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

HECTOR ESQUIVEL

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 6 - 2020

CLERK OF THE SUPERIOR COURT

By AMRIT KHAN Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Hayward Hall of Justice**  
**Superior Court of California County of Alameda**  
**24405 Amador Street Hayward, CA 94544**

CASE NUMBER:  
(Número del Caso): **HG20066858**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Eliyahu Yuli Kaplunovsky 1070 A Street Suite 6 Hayward, CA 94541 Phone (510) 736-0688**

**AMRIT KHAN**

DATE:  
(Fecha) **JUL 6 2020**

Clerk, by  
(Secretario) **AMRIT KHAN** Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010) or Proof of Service of Summons, (POS-010)).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

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1 Eliyahu Yuli Kaplunovsky, SBN#299178  
 2 LAW CALIFORNIA  
 3 1070 A Street Suite 6  
 4 Hayward, CA 94541  
 5 Office (510) 736-0688  
 6 Fax (888) 475-7798  
 7 Email yk@yulilaw.com  
 8 Attorney for Hector Esquivel, Plaintiff

ENDORSED  
 FILED  
 ALAMEDA COUNTY

JUL '6 - 2020

CLERK OF THE SUPERIOR COURT  
 By AMRIT KHAN Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 8 **COUNTY OF ALAMEDA**

10 HECTOR ESQUIVEL,

11 Plaintiffs,

12 vs.

13 HOME DEPOT USA, INC, and DOE 1  
 14 through DOE 100 inclusive,

15 Defendants,

Case No.:

HG20066858

**COMPLAINT FOR DAMAGES**

1. ASSAULT;

2. BATTERY;

3. SLANDER PER SE;

4. UNRUH CIVIL RIGHTS ACT §§ 51, 52;

5. RESPONDEAT SUPERIOR;

6. EMPLOYER NEGLIGENT  
 HIRING/SUPERVSION OF EMPLOYEE(S)

20 Plaintiff alleges:

24 **FIRST CAUSE OF ACTION**  
 Assault

26 1. Defendant JOHN-DOE 1 is an individual and at all times herein was a resident of Alameda  
 27 County.

1 2. Defendant HOME DEPOT USA, INC is and at all times herein mentioned was, a  
2 corporation organized and existing under the laws of California.

3 3. Defendants DOE I through DOE 1, inclusive are sued herein under fictitious names. Their  
4 true names and capacities are unknown to plaintiff. When their true names and capacities are  
5 ascertained, plaintiff will amend this complaint by inserting their true names and capacities  
6 herein. Plaintiff is informed and believes and thereon alleges that each of the factiously named  
7 defendants is responsible in some manner for occurrences herein alleged, and that plaintiff's  
8 damages as herein alleged were proximately caused by those defendants. Each reference in this  
9 complaint to "defendant, "defendants," or specifically named defendant refers also to all  
10 defendants sued under fictitious names.

11 4. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned  
12 each of the defendants, including all defendants sued under fictitious names, was the agent and  
13 employee of each of the remaining defendants, and in doing the things hereinafter alleged, was  
14 acting within the course and scope of this agency or employment.

15 5. On or about May 2, 2020 at the Home Depot located at 30055 Industrial Pkwy SW in Union  
16 City, California defendant JOHN DOE -1 placed plaintiff in fear of a harmful or offensive  
17 contact when he approached within close physical proximity of plaintiff, yelling profanities at  
18 him and walking towards him forcefully in a menacing manner and threatening to physically  
19 throw him out and have him arrested.

20  
21 6. In doing the acts as alleged above, defendant indented to cause or place plaintiff in  
22 apprehension of a receiving harmful or offensive contact with plaintiffs person.

23 **SECOND CAUSE OF ACTION**

24 **Battery**

25 7. Immediately, thereafter, defendant JOHN DOE-1 physically pushed plaintiff on the chest  
26 then pushed plaintiff again on his right shoulder and again a third time at which time plaintiff  
27 was able to raise his hands in defensive manner to prevent further physical attacks by JOHN  
28 DOE-1.

1 8. In doing the acts as alleged above, defendant acted with the intent to make a contact with  
2 plaintiff's person.

3  
4 **FIRST AND SECOND CAUSES OF ACTION**

Continued

5  
6 9. At no time did plaintiff consent to any of the acts of defendant alleged in the first and  
7 second causes of action, above.

8 10. As a proximate result of the acts of the defendant as alleged in the first and second causes  
9 of action, plaintiff's neck, upper back and right shoulder were severely injured.

10  
11 11. As a proximate result of the acts of the defendant plaintiff was injured to his health,  
12 strength, and activity, sustaining injury to his body and shock and injury to his nervous system  
13 and person and among others sustained the following physical injuries: Physical injury to his  
14 neck, upper back and right shoulder and post traumatic stress, all of which have caused him to  
15 suffer severe anxiety, insomnia, physical pain and mental anguish. These injuries will result in  
16 some permanent disability to him. As a result of these injuries, plaintiff has suffered general  
17 damages.

18 12. As a further proximate result of the acts of defendant, plaintiff has incurred, and will  
19 continue to incur, medical and related expenses. The full amount of these expenses is not  
20 known to plaintiff at this time.

21 13. As a further proximate result of the acts of defendant, plaintiff was prevented from  
22 attending his usual occupation as a legal assistant for a period of 5 days and a loss of 30  
23 additional hours of employment as of the date of this pleading, and thereby lost earnings to his  
24 damage.

25  
26 14. The aforementioned conduct of the defendants JOHN DOE- 1 though 10 was willful and  
27 malicious and was intended to oppress and cause injury to plaintiff, thereby warranting the  
28 assessment of punitive damages against the defendants JHON DOE -1 through JOHN DOE 10.

1 **THIRD CAUSE OF ACTION**

2 **SaInder Per Se**

3 15. On or about May 2, 202 defendant JOHN DOE -1 employee of defendant HOME DEPOT  
4 USA, INC spoke the following words and concerning the plaintiff: You are nothing but a  
5 fucking racist. Get out of here you goddam racist!! Get out of here or I will have you thrown out  
6 and arrested racist a\*\*hole.

7 16. On or about May 2, 2020 defendant(s) JOHN DOES - 2 though 10, also employees of  
8 defendant HOME DEPOT USA, INC, spoke the following words and concerning the plaintiff:  
9 You are nothing but a fucking racist. Get out of here you goddam racist!! Throw him out, racists  
10 need to get thrown out, leave now!! Get out go!!

11  
12 17. The words were heard by Rosemary Ludtke and several other persons whose names are  
13 not known to plaintiff.

14 18. The words uttered were a false statement, because plaintiff is not racist towards any  
15 ethnicity, religious, ancestry or other nationalities.

16  
17 19. These words were slanderous per se because they accused plaintiff of being a racist  
18 person and such a statement caused severe resentment and negative reactions in customers and  
19 employees of defendant and the local community which abhors and has a great distaste for  
20 racism.

21  
22 20. The words were understood by those who saw and heard them in a way that defamed  
23 plaintiff because other store customers began yelling at plaintiff and calling him a racist and to  
24 leave the store immediately.

25 21. As a result of the above-described words, plaintiff has suffered general damages to his  
26 reputation

1 22. As a further proximate result of the above-described words, plaintiff has suffered the  
2 following special damages: Anxiety, Insomnia, Post-Traumatic Stress, Extreme mental anguish  
3 and Emotional distress

4  
5 23. The above-described words were spoken by the defendant with malice and oppression in  
6 that they were intended to incite anger against plaintiff and to cause him embarrassment,  
7 humiliation and emotional strife.

8 **FOURTH CAUSE OF ACTION**  
9 **Unruh Civil Rights Act**

10 24. At all times herein mentioned, defendant HOME DEPOT USA, INC was the owner of a  
11 business establishment engaged in the business of sales of home hardware, equipment,  
12 materials and supplies commonly known as The Home Depot, situated in Union City, Alameda  
13 County, California.

14  
15 25. On May 2, 2020, plaintiff entered The Home Depot with the intention and purpose of  
16 purchasing home hardware, materials and supplies. Plaintiff was looking to purchase some  
17 items for use on a home project. Plaintiff was then approached by one of Home Depot's  
18 employees and was told to get out of the store or else he would be arrested. During the time  
19 plaintiff was on the above-mentioned premises home hardware, materials and equipment were  
20 sold to other patrons of the defendant's establishment who arrived before and after plaintiff.

21 26. Plaintiff is a person of the Hispanic race.

22  
23 27. Plaintiff is informed and believes and hereon alleges that Defendants, and each of them,  
24 denied to plaintiff, the services, advantages, accommodations, facilities, and privileges provided  
25 to other persons, as alleged above, on account of plaintiff's race or ancestry.

26 28. As a proximate result of the wrongful act of the defendant plaintiff has suffered the  
27 following special damages: \$4,000, plus attorney's fees. As provided in Civil Code Section 52.  
28



1 29. The above recited actions of defendant(s) were done with malice and oppression and in  
2 reckless disregard of the plaintiff's rights. Specifically, yelling at plaintiff to get out and leave  
3 with the intent of causing plaintiff fear, ridicule, humiliation and embarrassment in front of  
4 multiple people. Moreover, defendant actions were oppressive, because defendant(s) prevented  
5 plaintiff to from proceeding with his intended shopping, free of false accusations of being a  
6 racist by defendant(s) which subjected plaintiff to the resentment and disgust of defendant  
7 employees, customers and the local community.

8  
9 **FIFTH CAUSE OF ACTION**

10 **Respondeat Superior**

11 30. At all times herein mentioned, defendant JOHN DOES I through JOHN DOE 10 were the  
12 agents and employees of defendant HOME DEPOT USA INC and, in doing the acts herein  
13 described and referred to, were acting within the scope of their authority as agent and  
14 employees, and in the transaction of the business of the employment or agency. Defendant  
15 HOME DEPOT USA, INC is, therefore, liable to plaintiff for the acts of JOHN DOE- 1 though  
16 JOHN DOE- 10.

17 **SIXTH CAUSE OF ACTION**

18 **Employer's Negligent Hiring, Training, and/or Retention of Unfit**  
19 **Employee(s)**

20 31. Plaintiff is informed and believes and thereon alleges that, in doing the acts heretofore  
21 alleged, defendant HOME DEPOT USA, INC knew or in the exercise of reasonable diligence  
22 should have known, that defendant JOHN DOE-1 through JOHN DOE- 10 were incompetent  
23 and unfair to perform the duties for which they were employed, and that an undue risk to  
24 persons such as plaintiff would exist because of the employment.

25 32. Despite this advance knowledge, defendant HOME DEPOT USA, INC retained  
26 defendants JOHN DOE 1 through JOHN DOE-10 as employees in conscious disregard of the  
27 rights and safety of others. As a result of this conspicuous disregard of the rights of plaintiff is  
28 entitled to an award of punitive damages from defendant HOME DEPOT USA, INC.



1 WHEREFORE, plaintiffs demand judgment against defendants on all causes of action alleged  
2 as follows:

- 3 1. For general damages;  
4 2. For medical and related expenses according to proof;  
5 3. For lost earnings, past and future, according to proof;  
6 4. For punitive damages;  
7 5. For interests as allowed by law;  
8 5. For costs of suit incurred in this action; and  
9 6. Such other and further relief as this court may deem proper.

10 Date: 6/10/20

11  
12 LAW CALIFORNIA

13  
14  
15 By: 

16 Eliyahu Yuli Kaplunovsky,  
17 Attorney for Hector Esquivel, Plaintiff  
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28

**VERIFICATION**

Verification of Pleading (Code Civ. Proc., § 446)


Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)

by Hector Esquivel

I, Hector Esquivel, am a plaintiff in the above entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge except as to those matters that are therein stated in information and belief, and concerning those matters, I believe it to be true.

Executed on 6/11/, 2020, at Alameda County, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Hector Esquivel